adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: [47 U.S.C. 154, 303.]

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 252C3 and adding Channel 252C2 at Bentonville; by removing Channel 252A and adding Channel 250C2 at Mountain Home; and by removing Channel 249C2 and adding Channel 269A at Yellville.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–18286 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–34; RM–8100]

Radio Broadcasting Services; Glenwood Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 224A to Glenwood Springs, Colorado, as that community's second local FM service, in response to a petition for rulemaking filed on behalf of Gardiner Broadcast Partners, Ltd. See 58 FR 12916, March 8, 1993. Coordinates used for Channel 224A at Glenwood Springs are 39–32–36 and 107–19–18. With this action, the proceeding is terminated.

DATES: Effective September 10, 1993. The window period for filing applications on Channel 224A at Glenwood Springs, Colorado, will open on September 11, 1993, and close on October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–34, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 224A at Glenwood Springs.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–18288 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–92; RM–8205]

Radio Broadcasting Services; Howe, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Maple Communications Limited Partnership, permittee of Station KHYI–FM, Channel 237A, Howe, Texas, substitutes Channel 237C3 for Channel 237A at Howe and modifies Station KHYI–FM's construction permit to specify operation on the higher powered channel. See 58 FR 25593, April 27, 1993. Channel 237C3 can be allotted to Howe in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) south to accommodate Maple's desired site. The coordinates for Channel 237C3 at Howe are 33–23–58 and 96–35–51. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–92, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 237C3 at Howe.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–18287 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–29; RM–8157]

Radio Broadcasting Services; Temple, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Progressive Communications, Inc., permittee of Channel 269A, Temple, Texas, substitutes Channel 269C3 for Channel 269A at Temple and modifies Progressive's authorization to specify operation on the higher powered channel. See 58 FR 25593, April 27, 1993. Channel 269C3 can be allotted to Temple in compliance with the Commission's minimum distance

separation requirements with a site restriction of 20.1 kilometers (12.5 miles) northwest to avoid a short-spacing to vacant but applied for Channel 270A, Lometa, Texas. The coordinates for Channel 269C3 are 31–16–24 and 97–23–33. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–29, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 269A and adding Channel 269C3 at Temple.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–18290 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91–016–1]

RIN 0579–AA48

Chicken Disease Caused by Salmonella enteritidis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our regulations concerning chicken infection caused by *Salmonella enteritidis* serotype *enteritidis* (SE) by making the following major changes: (1) Exempting certain flocks from the testing requirements of the regulations, if the flocks are participating in certain voluntary *Salmonella* testing; (2) removing requirements for testing blood and internal organ samples from Test Flocks; (3) adding requirements to test Study Flocks for SE by testing egg samples; (4) adding requirements to trap and test rodents; (5) substituting the terms SE-Positive status (Environment) and SE-Positive status (Eggs) for the terms Test status and Infected status, and (6) allowing SE-Positive houses and flocks to be released from regulation only through depopulation, cleaning, and disinfection, not through negative testing.

We are proposing these major changes and other minor changes to better control the spread of SE in commercial egg-type chicken flocks. These changes would affect persons in control of chicken flocks that have been determined to be Study, Test, or Infected Flocks or to contain Test or Infected Poultry Houses, and persons transporting and receiving restricted articles.

DATES: Consideration will be given only to comments received on or before October 1, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-162-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301–436–4363.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on January 30, 1991 (56 FR 3730–3743, Docket No. 90–134), we promulgated regulations to address the problem of disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE) in egg-type chickens. At that time we imposed two sets of regulatory requirements: one to address the spread of SE in egg-type chicken breeding flocks, and one to address the spread of SE in egg production flocks. These requirements were incorporated into 9 CFR part 82 (referred to below as the regulations).

First, the regulations require that all hatching eggs and newly-hatched chicks moved interstate from egg-type chicken breeding flocks must be from flocks classified as U.S. Sanitation Monitored under the National Poultry Improvement Plan (NPIP), or must meet the requirements of a State classification plan determined by the Administrator to be equivalent to the U.S. Sanitation Monitored program (USSMP) under the NPIP. Such flocks are called Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks for the purpose of the regulations. Hatching eggs and newly-hatched chicks may be moved interstate from such flocks without further restriction under the regulations. The purpose of this requirement was to prevent the spread of SE associated with movement of hatching eggs and chicks from breeding flocks. This approach relies on NPIP testing, sanitation, and flock management techniques to exclude SE from breeding flocks.

Second, the regulations provide a system to test egg production flocks and separate poultry houses in such flocks, in order to identify those containing chickens infected with SE. The regulations focus on those flocks and houses that have been implicated as the most probable source of outbreaks of SE in chickens or humans. This system involves classification of egg production flocks in the categories of Study, Test, or Infected flocks or houses, and includes requirements for testing of environmental, blood, and internal organ samples for evidence of SE under certain circumstances. The interstate movement of articles from Test and Infected flocks and houses is restricted. Restricted articles include live chickens, eggs, manure, cages, coops, containers, troughs, and other equipment. Some of these articles are prohibited from moving, and some are allowed movement under a permit and special conditions. Eggs may be moved interstate from Infected and Test flocks or houses only for pasteurization, hard cooking, or directly to a port for export from the United States.

After evaluating the progress to date of our SE program, and consulting with industry and other involved Federal and State agencies, we have determined that a number of changes could be made in our regulations to increase the effectiveness of the program. These proposed changes are discussed below.

Identification of Study Flocks

Under the current regulations, if a human or poultry disease outbreak of SE is traced back to an egg production flock, that flock is designated a Study Flock and must undergo testing in accordance with the regulations. The Animal and Plant Health Inspection Service (APHIS) is currently working with industry to develop voluntary testing programs for *Salmonella*, which many egg production flocks could soon be using. Various alternatives for voluntary SE testing and control programs are currently undergoing evaluation by APHIS. We believe that if a flock that was involved in a disease outbreak is already being tested under an adequate voluntary program, there is

no need to also test it as a Study Flock. Doing so would require duplication of testing without improving *Salmonella* control.

Therefore, we propose to add the following paragraph (iv) to § 82.32(a)(1), which deals with how Study Flocks are designated:

> (iv) No flock will be determined to be a Study Flock if the flock is participating in a voluntary testing and control program for *Salmonella enteritidis* serotype *enteritidis* that the Administrator has determined imposes testing requirements identical or equivalent to those required by this subpart. Testing requirements will be deemed equivalent to those required by this subpart if the Administrator reviews scientific studies of the effectiveness of the tests in identifying *Salmonella enteritidis* serotype *enteritidis* and finds that the reliability of the proposed tests meets or exceeds the reliability of the tests required by this subpart.

We have had some difficulty with § 82.32(a)(1)(iii) of the current regulations, which states that we will determine a flock to be a Study Flock when, among other things, "Shipping records or other evidence reveal that the probable source of the eggs was the flock determined to be a study flock." During investigations of SE outbreaks in which eggs are implicated, we study the records of egg packers and shippers to determine the source of eggs. Often these facilities pack and ship eggs from several flocks on the same day, and intermix the eggs in such a way that any of several flocks could be the source of the eggs implicated in an SE outbreak. In a number of investigations of human and poultry SE outbreaks over the past year, it was not possible to confirm that the eggs causing the outbreak came from a single source. In these instances, more than one producer could have supplied the eggs implicated. When it is determined that a limited number of producers could have supplied the eggs, it would be preferable to test the flocks of all the major suppliers to find those responsible for the SE outbreak, rather than to not test any of the suppliers because they cannot be narrowed down to a single source, as has been the practice under the current regulations.

Therefore, we are proposing new language to provide some flexibility to identify more than one flock as the probable source of eggs causing an SE outbreak. Proposed § 82.32(a)(1)(iii) would state that in determining whether to designate a Study Flock, the Administrator would consider whether:

> (iii) Shipping records or other evidence reveal that a flock was a probable source of the eggs. If the shipping records or other evidence identify more than one flock as a probable source of the eggs, the Administrator may classify all such flocks as study flocks . . .

Pullets

"Pullet" is a term used in the poultry industry to describe a young chicken, from shortly after the time it is hatched until it is old enough to be an effective layer (about 5 months of age). Movement of pullets may spread SE, since pullets may be infected with SE when they are used as replacements for laying hens, and could introduce SE infection into commercial flocks. The regulations address the interstate movement of hatching eggs and newly-hatched chicks, and address laying hens in egg production flocks, but do not establish any specific requirements for pullets, i.e., chickens between the time they are hatched and the time they enter an egg production flock.

The only provision of the regulations that has significant implications for pullets is § 82.32(a)(2). That paragraph allows APHIS to determine an egg production flock to be a Study Flock if it has received progeny (i.e., pullets):

> from an egg–type chicken breeding flock that has had *Salmonella enteritidis* serotype *enteritidis* recovered from the internal organs of one or more chickens through testing in accordance with § 145.23(d) of this chapter, at any time since the last negative environmental sample tested for that egg–type chicken breeding house in accordance with § 145.23(d) of this chapter.

Basically, this provision states that an egg production flock could be determined to be a Study Flock if it receives pullets from a breeding flock that has tested positive for SE in accordance with the NPIP standards for SE testing, contained in 9 CFR part 145.

Upon further consideration, we propose to eliminate this provision from the regulations. No particular provisions were specified in the regulations as to how pullet flocks that are classified as Study Flocks would be further tested, nor did the regulations make clear what action would follow if the environment of the pullet flock and/or the chicks themselves were found to be positive. We do not believe that restricting pullet flocks based on tests that were really designed for egg production flocks is justified. Therefore, we propose to eliminate the provision for classifying flocks as Study Flocks if they have received progeny from SE-Positive breeder flocks (pullet flocks). To encourage the use of nonregulatory market forces to control the risk of transmitting SE in breeding flocks, we propose to require that the owner of a primary or multiplier breeder flock that tests positive for SE under the NPIP must notify all subsequent purchasers of chicks from the flock that the chicks are progeny of a breeder flock that tested positive for SE under the NPIP. Given this information, the purchaser of the chicks will decide on a voluntary basis what testing and disposition to make of the chicks. (See proposed § 82.35(b).) Due to extensive industry concern about SE, flocks containing chickens purchased from a breeder flock found positive for SE through NPIP testing face a reduced market and lower prices for their products. We believe these market forces will induce purchasers of such chickens to take steps to control the risk of SE in their flocks, by actions such as voluntary testing or segregation of the chickens purchased from breeder flocks that tested positive for SE under the NPIP.

APHIS is continuing to gather data to determine whether additional regulatory restrictions should be developed for pullets. Although we have not yet determined whether or how to regulate pullet movement, we are currently engaged in educational efforts to inform members of the poultry industry about SE risks associated with pullets and methods to reduce these risks. We are also encouraging pullet growers to test the environment of their premises for SE and to move pullets in equipment and vehicles that have been cleaned and disinfected to prevent possible contamination by SE.

Eliminating Test and Infected Categories and Adding SE-Positive Categories

Under the current regulations, a flock or poultry house is required to be tested for SE if it falls into one of three statuses: Study, Test, or Infected. A flock is a Study Flock if it is implicated in an outbreak of SE (or as discussed above regarding a provision we propose to remove, if the flock receives progeny from a breeding flock that tests positive for SE under the NPIP). If the environment of a flock or separate poultry house in the flock tests positive for SE, the flock or house enters Test status. If internal organs from chickens in a flock or separate poultry house test positive for SE, the flock or house enters Infected status.

To simplify the regulations and make our terminology more informative, we propose to eliminate the terms Test and Infected, and to substitute a new term, SE-Positive.

As discussed below, we propose to change the pattern of SE testing of flocks identified through trace-back from SE outbreaks, by adding a requirement to test their eggs for SE. Flocks or houses with SE-positive eggs would be subjected to the most severe restrictions

on interstate movement of their eggs and other articles. Flocks or houses that have SE in the environment, but not in eggs, would be subjected to less severe restrictions.

To facilitate this, we will continue to collect environmental samples, and will also collect egg samples, from chicken houses in Study Flocks. Flocks or separate poultry houses that test positive for SE in the environment but negative for SE in eggs would be classified as SE-Positive (Environment). Flocks or separate poultry houses that test positive for SE in both the environment and eggs would be classified as SE-Positive (Eggs).

Eliminating Blood and Internal Organ Tests For Test Flocks and Houses

The current regulations provide that chickens in Test Flocks and Test Houses must undergo both blood and internal organ tests with no recovery of SE to be released from Test status. If SE is recovered from the internal organs, the flock or house is placed in Infected status (see current § 82.32(c)).

A stained–antigen, rapid, whole blood test (the pullorum test) is used as an indicative test, and to help identify particular banks of cages and chickens from which internal organ samples should be selected. Our experience implementing the regulations has shown that the blood tests are not sufficiently specific to be of much assistance in determining whether chickens in a house or flock are infected with SE.

The current regulations use internal organ tests to establish whether chickens are infected with SE. We continue to believe that internal organ tests are an accurate indication of whether chickens in a flock are infected with SE, and that the potential exists for SE-infected chickens to transovarianally transmit SE to eggs of the chickens, which could subsequently infect people or poultry with SE. However, recent research indicates that SE-infected chickens may shed SE into eggs intermittently, and during some periods a chicken infected with SE may lay eggs free from SE. Therefore, while internal organ tests would accurately identify SE-infected chickens, they may not be a good indicator that SE-infected eggs are being laid by the chickens.

Since the goals of the regulations are to control the spread of SE and to reduce the risk to poultry and public health, this suggests two complementary strategies for controlling the means of SE spread. An SE-positive environment means articles from the environment (including chickens) could spread SE; therefore, we should restrict movement of articles from flocks with positive manure and egg transport machinery tests. However, eggs from an environmentally positive flock may either contain SE or be free from SE; therefore, we should test eggs from environmentally positive flocks, and restrict their movement only if they test positive for SE. When the current program started in February, 1990, the testing of eggs was not considered practical or economically feasible. Since that time, work by various researchers and by the Salmonella Enteritidis Task Force has developed methods to culture eggs which are practical and economical.

We propose to abandon use of blood tests because our experience has shown them to be of limited use, and we propose to abandon internal organ tests because egg tests are more useful in identifying flocks where SE is actually present in eggs.

Additionally, a program that relies on environmental and egg testing would impose less of a financial burden on regulated persons than the current program of environment, blood, and internal organ tests. Egg tests are cheaper for flock owners, because sampling eggs is less expensive and disruptive to flock operations than drawing blood and sacrificing poultry for tests. Since studies and operational experience now indicate that an egg testing program is an acceptable substitute for blood and internal organ testing, we are proposing this less costly alternative.

Adding Rodent Testing for Study Flocks

Recent studies have indicated that rodents, and particularly mice, in hen houses serve as a reservoir for SE, and play an important role in its transmission. If SE is present in a flock environment, rodents may spread it among the poultry and from house to house. Therefore, we intend to require trapping and testing of rodents in flocks where manure or egg transport machinery samples collected from the environment have tested positive for SE. Flocks with a rodent population infected with SE pose a risk for house-to-house transmission of SE. Therefore, inspectors would determine that such flocks do not achieve the level of biosecurity needed for poultry houses in the flock to qualify as "separate poultry houses" under the definitions in § 82.30, unless the flock or house is under an adequate rodent control program.

We propose to add provisions for collecting and testing rodents to § 82.32, discussed below, and to add the following sentence to the definition of "separate poultry house" in § 82.30: "No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation."

Testing Manure, Egg Transport Machinery, Rodents, and Eggs For SE

We propose to test for SE using the following methods. After a flock is determined to be a Study Flock, a Federal or State representative will collect manure samples, egg transport machinery samples, and rodent samples from all houses in the flock. The manure and egg transport machinery samples will be collected using drag swabs as described in § 82.32(b)(1)(i) and (ii) of the proposed regulations. The Federal or State representative will attempt to obtain rodent samples by placing 12 repeating rodent traps in each house and checking them regularly, as described in § 82.32(b)(1)(iii) of the proposed regulations.

The manure and egg transport machinery samples from a Study Flock will be cultured first. If none of these samples yield positive test results for SE, the Study Flock will be released from regulation and no further tests will occur. If any of the manure or egg transport machinery samples test positive for SE, the flock or house enters SE-Positive (Environment) status, and interstate movement of articles, including eggs, from the flock is restricted pending testing of eggs from the house or flock for SE (see proposed § 82.34(a)). Egg samples will be collected at random from each row of cages in an SE-Positive (Environment) flock or house, as described in § 82.32(b)(1)(iv) of this proposal, and will be cultured for SE. If the egg samples from any houses test positive for SE, the positive houses will be classified as SE-Positive Houses (Eggs). If the flock does not consist of separate poultry houses as defined by § 82.30, the entire flock will be classified as an SE-Positive Flock (Eggs).

Classification in SE-Positive (Eggs) status would trigger immediate restrictions on the interstate movement of eggs and other articles from the flock, in accordance with § 82.34. On the other hand, if egg samples from an SE-Positive (Environment) flock or house test negative for SE, as discussed below, interstate movement restrictions on eggs from the flock or house would be dropped, but would continue for other articles from the flock or house (live chickens, cages, coops, containers, troughs, and other equipment). In the case of an SE-Positive (Environment)

flock or house, movement of these articles should be restricted because they may be contaminated with SE from the environment that tested positive for SE; but the eggs should be permitted unrestricted movement because they tested negative for SE.

If a house or flock tests positive for manure or egg transport machinery samples but negative on the test of egg samples, three more sets of egg samples will be collected and tested, to ensure that the negative results are not due to intermittent contamination of eggs or failure of the tests to detect positive eggs. These three additional sets of egg samples will be collected and tested at 2 week intervals. Those houses which yield positive results for manure or egg transport machinery samples and negative results for all four sets of egg samples would be classified as SE-Positive Houses (Environment). Such houses would have subsequent samples of 1,000 eggs collected for SE culture every 3 months during the life of the flock. Our experience enforcing the regulations and studies of the epidemiology of SE in poultry indicate that an interval of 3 months between tests is an effective timeframe for testing[1]. Sampling of 1,000 eggs will provide a 99 percent confidence level of detecting positive eggs if they are present at a 0.5 percent level. If any SE is found in any of these samples, the house or flock would be reclassified as SE-Positive (Eggs) and interstate movement of eggs and other articles would be restricted accordingly.

There is one situation in which we would not wait 3 months before retesting an SE-Positive House (Environment). If an SE-Positive House (Environment) is identified as the probable source of eggs implicated in a new SE outbreak, in accordance with § 82.32(a), the house would be retested immediately.

Proposed § 82.32(e) states that houses or flocks that test positive for the egg samples and are classified as SE-Positive (Eggs) may continue to have egg samples collected and tested every 2 weeks, at the discretion of the owner. If a flock or house that is SE-Positive (Eggs) tests negative for four consecutive sets of egg samples, the status of the flock or house will be changed to SE-Positive (Environment), because the tests indicate that the chickens are not likely to be currently shedding SE into eggs. Although a flock whose chickens once shed SE into eggs may experience such shedding again in the future, our experience enforcing the regulations indicates that testing of samples of eggs from such flocks every 3 months should detect further shedding of SE into the eggs.

We propose that these egg samples be collected and tested as follows. These procedures are based on standard microbiological procedures and scientific studies[2] of identification methods for SE that indicate that SE can be effectively identified through culturing of pooled egg samples:

Egg sample collection. A Federal representative or State representative shall randomly collect a total of 1,000 eggs from each egg layer house, or the total daily production of the house if the daily egg production totals less than 1,000. In order to acquire a representative sample, an equal proportion of eggs will be sampled at random from each bank in the poultry house. No cracked or dirty eggs shall be collected. Any visible adherent material shall be removed from the shell surface and the eggs disinfected, either by a 5 second dip in boiling water, or with a 3:1 solution consisting of 3 parts 70% alcohol (ethyl or isopropyl) to 1 part 10% iodine (Lugol's). The eggs will then be allowed to air dry. Eggs with chipped, cracked, or broken shells shall not be included in a sample. Each sample shall consist of 20 eggs cracked aseptically into a sterile whirl-pak bag, for a total of 50 samples per house. While cracking the eggs, the Federal or State representative must wear sterile gloves, which must be changed between samples. (Proposed § 82.32(b)(1)(iv))

Egg sample testing. Each sample shall be thoroughly mixed by hand, or using a stomacher, until all yolks are completely mixed with the albumen. Samples shall then be held at room temperature (68–75°F) for at least 72 hours. Each sample shall be used to inoculate two selective differential media plates (for example, brilliant green (BG) and xylose-lysine-deoxycholate (XLD) plates). Plates shall be incubated at 37°C and observed for salmonellae-like colonies for up to 42 hours. If initial inoculum is heavily contaminated, selectively enrich samples in Hajna tetrathionate or tetrathionate-brilliant green broth or subculture to xylose-lysine-tergitol-4 (XLT4) or brilliant green with novobiocin (BGN). If salmonella-like colonies are present in a sample, three such colonies shall be characterized by inoculating each into triple sugar iron (TSI) and lysine iron (LI) agar, and by subculturing each to nonselective medium and serogrouping with group specific antisera. Additional testing is optional. Those colonies that are biochemically and serologically characterized as salmonellae shall be sent to NVSL for serotyping. (Proposed § 82.32(d)(3))

The manure and egg transport machinery samples required by this proposed rule would be the same as those required by the current regulations. The procedure for the placement of traps, collection of captured rodents, and laboratory testing of the rodents for SE were developed based on APHIS review of existing rodent control programs in poultry houses and laboratory testing protocols currently employed in research laboratories for isolating and identifying SE from rodents.

The rodent samples required by this proposed rule would be collected and tested as follows:

Rodent sample collection. At the time that manure or egg transport machinery samples are collected in accordance with § 82.32(b)(1) and tested in accordance with § 82.32(d), a Federal representative or State representative shall place 12 repeating metal rodent traps baited with chicken feed in each poultry house. The traps shall be placed in any areas showing visible signs of rodent activity or rodent travel. A Federal representative or State representative shall check the traps at 24 to 48 hour intervals during the period that sample collection is underway, and shall collect all rodents trapped, euthanize them, and submit them to a laboratory authorized in accordance with § 82.39 for testing. A Federal representative or State representative shall clean and sanitize the traps between uses. (Proposed § 82.32(b)(1)(iii))

Rodent sample testing. Internal organs, and a portion of the intestinal tract, shall be aseptically collected from each rodent submitted. A sample will consist of the liver, spleen, and intestinal tissues collected from one or more rodents, in pool sizes up to five rodents per pool. Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate two different selective media agar plates (consult NVSL for recommended media) and incubated at 37°C for 24 hours. Up to five Salmonella-suspect colonies from each sample shall be inoculated in TSI and LI media, and incubated at 37°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antisera. All Group D isolates shall be sent to the National Veterinary Services

[1] Further information concerning studies of the epidemiology of SE in poultry can be obtained by writing to the Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

[2] See, e.g., Gask and Beard, "Detection and Enumeration of Salmonella Enteritidis in Fresh and Stored Eggs Laid by Experimentally Infected Hens," *Journal of Food Protection* 55:3, March 1992. Further information concerning studies of the effectiveness of egg tests can be obtained by writing to the Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

Laboratories for species identification. (Proposed § 82.32(d)(2))

Interstate Movement Restrictions

We intend to use the results of egg culture for SE to determine how much of a risk eggs from SE-Positive Houses or Flocks constitute for transmission of SE, by actually testing samples of eggs from these chickens. We believe the actual culturing of the eggs is a direct and efficient indication of SE contamination of eggs and a good basis for determining whether to restrict interstate movement of eggs.

Therefore, we propose to restrict the interstate movement of live chickens, cages, coops, containers, troughs, other equipment, and manure from an SE-Positive House or Flock (Environment). We propose to restrict the interstate movement of all these articles, and eggs, from an SE-Positive House or Flock (Eggs). (We also propose to restrict movement of eggs from SE-Positive Houses and Flocks until required egg tests are conducted; i.e., until it is determined that the correct status of the house or flock is SE-Positive (Environment) and not SE-Positive (Eggs).) We propose to restrict the movement of all regulated articles, including eggs, from SE-Positive Houses (Eggs), because the eggs from these houses, as well as articles in the environment, have tested positive for SE. (See proposed § 82.34.)

We do not believe this decision would significantly increase the risk of spreading SE, because in all cases where the house environment has tested positive for SE, movement of articles, including eggs, would be at least temporarily restricted. The only difference between this proposal and the current regulations related to interstate movement restrictions is that eggs from a house or flock whose environment has tested positive for SE would be allowed to move after eggs from the house or flock test negative for SE according to standards proposed in this document. Because they could spread SE to other flocks, regulated articles other than eggs would continue to be subject to movement restrictions, whether they come from an SE-Positive House (Environment) or an SE-Positive House (Eggs).

The proposed interstate movement restrictions in concert with the proposal to use egg testing in lieu of blood and internal organ testing might allow interstate movement of eggs from some flocks containing chickens infected with SE, if the chickens are not actively shedding SE into eggs at the time the egg tests are conducted. It is important to address the intermittent nature of SE shedding by layer hens, and to guard against the possibility that a flock could be classified as SE-Positive (Environment) and allowed unrestricted movement of eggs, and then begin shedding SE into the eggs. There are two provisions in the proposal to address this risk.

The first provision is that SE-Positive (Environment) flocks and houses must undergo four separate sets of egg tests at 2 week intervals, in accordance with proposed § 82.32(c)(1) and (c)(2). The available epidemiological evidence suggests that if SE shedding is going to occur in a flock, it is likely to occur sometime during the 8 week period of testing, and would be detected. (Once shedding begins in a flock it usually lasts for longer than 2 weeks, so if one egg test occurs prior to shedding, the next would occur during shedding.)

The second provision to guard against flocks that begin shedding after negative egg tests is the requirement in proposed § 82.32(c)(3) that a flock that completes four sets of negative egg tests must undergo an additional egg test every 3 months for the life of the flock. This requirement is proposed to address the slight possibility that a flock would not shed SE into eggs during the initial 8 weeks of egg testing, but could begin shedding SE into eggs after that point. We considered the alternative of requiring that egg tests be conducted every two weeks for the life of each flock in SE-Positive (Environment) status, but decided that requiring so many egg tests would significantly drain agency resources and impose substantial economic burdens on producers without achieving a proportional gain in terms of reducing risks of SE spread.

Interim Rule Allowing Post-Release Testing of Flocks and Houses

On January 9, 1992, we published an interim rule in the **Federal Register** that was effective on January 6, 1992 (57 FR 776-779, Docket No. 91-193). This rule allows APHIS to test flocks and houses for SE for a period of 18 months following the time the flock or house is released from test or infected status. If the flock or house is released due to depopulation, the 18-month period commences at the time the flock is repopulated.

We took this action because we believe there is a significant possibility that released flocks may become reinfected through such avenues as contaminated feed or rodent problems. We continue to have concerns about post-release reinfection. Therefore, we are re-proposing our current post-release testing provisions, with changes to conform with other changes contained in this proposal. These post-release testing provisions are set out in proposed § 82.33(d).

Release From SE-Positive Status

According to current § 82.32(e) of the regulations, a flock or house may be released from Infected status if internal organ samples from the chickens test negative for SE, or if the flock or house is depopulated, cleaned, washed, and disinfected in accordance with the regulations.

Upon further consideration, APHIS has determined that the *Salmonella* control program would be more effective if we allow SE-Positive Houses and Flocks (Environment) and SE-Positive Houses and Flocks (Eggs) to be released from SE-Positive status only after depopulation and cleaning and disinfection.

It is only fair to allow Study Flocks, which may not be infected, to be released either through negative testing or depopulation and cleaning and disinfection, whichever the owner chooses. For houses or flocks that have tested positive for SE, we do not believe that subsequent negative tests alone provide sufficient assurance of risk reduction to justify releasing them from regulation. For example, our experience has shown that it is nearly impossible to eliminate SE from the house environment without depopulation, cleaning, and disinfection, but a house will sometimes test negative on one or several tests for environmental SE even though the pathogen is still present.

Therefore, we propose to allow release of SE-Positive Houses and Flocks (Environment) and SE-Positive Houses and Flocks (Eggs) only after depopulation and cleaning and disinfection. As discussed above, an SE-Positive House or Flock (Eggs) could have its status changed to SE-Positive (Environment) if it tests negative for SE in its eggs four consecutive times; however, the house or flock would have to be depopulated, cleaned, and disinfected before it could be released from SE-Positive (Environment) status. We are proposing these changes in a new § 82.33, which consolidates provisions concerning release from regulation of flocks and houses.

Use of Monitoring Tests

Currently, all premises which include an Infected House must have other houses on the premises tested for SE according to a schedule in the regulations. This requirement was designed to protect against the possibility that SE could spread from an Infected House to another house on the same premises.

However, one of the bases of the regulations was that it is possible to regulate on an individual poultry house basis, rather than a whole flock basis, when the individual poultry houses are sufficiently separated to minimize the spread of disease between them. Criteria for determining when poultry houses have sufficient biosecurity to allow them to be separately regulated were the basis for the following definition in § 82.30 of the regulations:

Separate poultry house. A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house.

We propose to amend this definition to acknowledge that there is no such thing as absolute biosecurity, and that judgment of a Federal or State representative is necessary to determine whether the biosecurity that exists in a flock is sufficient to designate separate poultry houses in the flock. We also propose to add a sentence to this definition addressing separate poultry house status for flocks that have positive rodent tests, as discussed above. Therefore, we propose to change this definition to read as follows:

Separate poultry house. A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation.

If a flock consists of poultry houses that meet this definition, we believe the risk that SE could spread from one house to another within the flock is low, and consequently there is no need for monitoring tests under these circumstances. Therefore, we also propose to remove § 82.38, Monitoring Tests.

Supervision of Hard Cooking Operations

In the current regulations, paragraph (a) of § 82.33 states that eggs may be moved interstate from test poultry houses, test flocks, infected poultry houses, and infected flocks:

only for pasteurization at an egg products plant inspected by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking at an egg products plant operating under the Agricultural Marketing Service Voluntary Egg Products Inspection Service in accordance with 7 CFR part 55, * * *

The intent of this provision was to ensure that the eggs were pasteurized or hard cooked in a manner that effectively destroyed any SE present in the eggs. To ensure this, we allowed egg movements only to egg product plants operating under existing Agricultural Marketing Service (AMS) regulatory programs that would ensure proper pasteurization or cooking of the eggs.

However, eggs that are properly hard cooked (cooked until the yolk and white have solidified) will not spread SE, even if they are cooked at a location other than an egg products plant operating in accordance with AMS regulations in 7 CFR part 59. Our desire is to allow eggs to be hard cooked at any facility that is supervised by AMS and found to perform this process effectively. Upon request and on a user fee basis, AMS is prepared to supervise hard cooking operations. Such supervision will be provided to assure the eggs are properly hard cooked. The supervision will be provided under the AMS voluntary egg products inspection program in accordance with 7 CFR part 55.

This change would provide an option for additional firms to receive eggs for hard cooking under AMS supervision, thus increasing the number of plants which may be eligible to process eggs from SE-Positive (Eggs) Flocks and Houses.

Therefore, we propose to change the language regarding pasteurization and hard cooking quoted above to state that eggs may be moved interstate from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs):

only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking (cooked until the yolk and white have solidified) and processing under Agricultural Marketing Service supervision in accordance with the provisions of 7 CFR part 55 * * * (proposed § 82.34(a))

Flocks That are the Probable Source of Disease in Two or More Outbreaks

The current regulations, in § 82.32(b), state that a flock can be directly classified as a Test Flock before any testing, if the flock "is the probable source of disease in three or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*." We propose to reduce this threshold number from three to two outbreaks, to place more timely interstate movement restrictions on flocks that may present a health risk. Therefore proposed § 82.32(b) states that "If a Federal representative determines on the basis of epidemiologic investigation that any flock is a probable source of disease in two or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*, that flock shall be determined to be an SE-Positive Flock (Environment) * * *."

Miscellaneous

This document also proposes editorial changes for purposes of clarity, and to assimilate the new proposed amendments discussed above with material already contained in the regulations. We propose to move the requirements concerning authorized laboratories from the definitions section, § 82.30, to a new § 82.39, since these are substantive requirements, not a definition. The requirements for authorized laboratories are also edited to make them consistent with procedures employed by the National Veterinary Services Laboratories (NVSL). In addition, we propose that the approval of authorized laboratories will be considered only when the Director, NVSL determines that the NVSL's capacity for conducting tests under these regulations has been exceeded. We also propose that the Area Veterinarian in Charge (AVIC) be consulted prior to approval of an authorized laboratory in the AVIC's state. We are adding these requirements because we believe that NVSL should be the preferred source for such testing because we have direct control over the quality of testing at NVSL, and because results of tests conducted at NVSL are readily available to other APHIS offices engaged in Salmonella activities. It is more difficult to collect and organize test data from a variety of outside laboratories. The AVIC would be involved in approval of laboratories because the AVIC may be able to provide information regarding local laboratories' ability to reliably perform the required tests.

In addition, we propose minor changes to the laboratory test methods

for samples, to employ our current best knowledge of effective test techniques for *Salmonella*. Specifically we propose to (1) substitute tetrathionate-brilliant green selective enrichment broth for Mueller-Kauffman tetrathionate selective enrichment broth; (2) make it clearer that each sample shall be used to inoculate an XLT4 agar plate and a brilliant green novobiocin agar plate; (3) change the requirement to "inoculate at least 5 *Salmonella*-suspect colonies from each sample" to a requirement to inoculate "up to 5 *Salmonella*-suspect colonies," and (4) add a requirement that if, after 24 hours, no *Salmonella*-suspect colonies are present, the plates will be incubated for an additional 24 hours.

We also have made changes to proposed § 82.38, which deals with cleaning and disinfection of Study and SE-Positive flocks and houses, to specify that manure and litter removed from houses must be placed in an isolated area where poultry or livestock will not come in contact with the manure or litter. We propose this change to ensure that poultry or livestock will not come in contact with and spread SE organisms that may be present in the manure and litter.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an alternative to the provisions of this rule, we have considered taking no action, and enforcing the current SE regulations. This alternative was rejected in favor of adopting a system of testing which would permit a more direct and efficient evaluation of the actual risk presented by eggs from a flock implicated in a human or poultry SE outbreak.

The provisions of this rule would not have significant economic impacts on large or small entities. The chief businesses affected would be a small number of egg production flocks that are determined to be in Study or SE-Positive status. If this proposed rule is adopted, these flocks would continue to suffer the economic impacts imposed by the final rule published in the Federal Register on January 30, 1991 (56 FR 3730–3743, Docket No. 90–134).

There are two provisions of that final rule that would continue to have economic impacts on some small entities if this proposal is adopted: (1) the prohibition on interstate movement of hatching eggs and newly-hatched chicks unless they are classified "U.S. Sanitation Monitored" under the NPIP or meet a State plan determined to be equivalent by the Administrator (the Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks), and (2) the testing requirements and restrictions on interstate movement of restricted articles.

Breeders affected by the hatching eggs and newly-hatched chicks classification requirement fall into two groups; approximately 275 large commercial breeders (including 26 primary breeders) of egg-type chickens engaged in interstate movements, and a larger number (estimated at several thousand) of smaller breeders, most of which are small entities, that may occasionally or frequently wish to sell hatching eggs and newly-hatched chicks interstate.

Almost all large commercial breeders participate in the U.S. Sanitation Monitored program of the NPIP, and these breeders should feel little or no additional impact from the regulations, since they are already meeting its classification requirements by participating in this program of the NPIP.

Smaller breeders of egg-production chickens who wish to engage in interstate sales or other interstate distribution of hatching eggs and newly-hatched chicks will be required to participate in the U.S. Sanitation Monitored program of the NPIP or a State program determined to be equivalent by the Administrator, at an annual cost of approximately $750 per chicken house. In some cases, this testing cost could be partially or wholly subsidized by State governments or the Federal government. While this annual cost could be a significant expense for a small breeder, the data available to us indicate that a majority of small breeders engaged in interstate movements are already members of the NPIP or a State program, and therefore are already bearing the cost. Therefore, we do not believe this requirement will have a significant economic impact on a substantial number of small entities.

Egg production flocks containing houses that are identified as SE-Positive (Eggs) or SE-Positive (Environment) will suffer economic impacts as a result of this rule, in the form of revenue loss due to the restrictions on interstate movement of chickens, eggs and other articles for the period they are restricted. The total number of egg production flocks that will be identified as containing SE-Positive houses, and the number of these which are small entities, cannot be estimated until we acquire further data on the extent and rate of spread of SE in egg production flocks. In 1988, 40 egg production flocks were implicated, none of which were small entities. However, approximately 93 percent of egg production flocks are small entities (80,210 of 86,005 producers of poultry products for sale), and it is likely that some egg production flocks that are small entities will be implicated in the future.

The revenue loss will depend on the length of time the flock is determined to contain an SE-Positive house, the percentage of the flock's houses that are determined to be SE-Positive (eggs) versus SE-Positive (Environment), the availability of interstate markets for pasteurized and boiled eggs, and other variables. Flocks that are determined to contain a large percentage of SE-Positive (Eggs) houses could suffer severe financial losses during the period of interstate movement restrictions. It is also possible that flocks identified as Study Flocks, or flocks that formerly contained SE-Positive houses and were later released from that status, could suffer indirect economic losses caused by adverse publicity. The owners of such flocks could face loss of markets or reduced prices for their products, even after interstate movement restrictions no longer apply to the flock. However, some producers would suffer such indirect economic impacts even if this rule were not adopted. Flocks are frequently suspected of contamination by *Salmonella*, and suffer financial losses as a result, without being formally identified as suspect by a government program.

Based on the number of egg production flocks found to contain houses infected with SE over the past few years, we estimate that on the order of 80 egg production flocks per year will be determined to contain SE-Positive (Eggs) or SE-Positive (Environment) houses and will thus be subjected to interstate movement restrictions. This number is less than 0.1 percent of the total number of egg production flocks that are also small entities. Therefore, while those small entities that are affected may suffer significant economic

impacts, we do not believe the total number of small entities affected will be substantial.

For flocks and houses that are SE-Positive (Eggs), the chief economic impact consists of revenue loss due to the prohibition against interstate sale of their eggs (except for breaking and pasteurization) for the period they are considered to be SE-Positive (Eggs). For flocks and houses that are SE-Positive (Environment), there would be lesser economic impacts associated with restrictions on moving articles other than eggs interstate.

For flocks that must be tested under the Salmonella regulations, there is no significant difference between the cost of conducting blood and organ tests under the current regulations and the cost of instead conducting egg tests under the proposed regulations. Both the current and the proposed test procedures require about six person-days of work to collect and process samples up to the point where the samples are submitted to a laboratory for bacteriological culture. The current regulations result in 60 organ samples from each house being cultured, and the proposed regulations would result in 50 pooled egg samples being cultured. The costs of culturing an organ sample or an egg sample in a lab are similar, so the smaller number of egg samples tested means a smaller total laboratory test cost for each house tested if egg tests are used. However, since the major cost for both blood/organ tests and egg tests lies in the six person-days spent collecting and processing samples before they get to the lab, switching to egg tests would reduce total sample collection and testing costs by no more than a few percent.

The proposed use of egg tests would allow flocks that test negative on the egg tests to continue to sell eggs without restriction. Under the current regulations, some of these flocks would probably be restricted to selling their eggs to breaker plants for pasteurization or hard cooking, due to positive organ tests. The price paid for breaker eggs varies widely from place to place and over time, and on occasion the price for breaker eggs even exceeds the price for fresh shell eggs. However, long-term nationwide price data indicate that breaker plants pay an average of 5 to 10 cents per dozen less for eggs than other markets pay. Using egg tests would allow flocks whose eggs test negative to forego egg sale restrictions that would otherwise be applied to them based on positive organ tests, and that would have significant costs for them.

We estimated above that on the order of 80 flocks or houses per year might have their egg sales restricted. For a typical flock, this might mean 800,000 dozen eggs sold at an unrestricted price 5 to 10 cents higher than the restricted price, or increased revenue of $40,000 to $80,000 per flock. We do not have reliable data yet on the number of flocks that might have egg sales restricted under the current regulations but would be allowed unrestricted egg sales under the proposed regulations. Based on the limited data available from flocks that have been subjected to both organ and egg tests, we estimate that up to half of the flocks or houses that would have been restricted under the current regulations would not have egg sales restricted if the proposed egg tests are used. Under this assumption, the maximum savings would be on the order of $1.6 million to $3.2 million per year for 40 flocks that would otherwise have egg sales restricted.

The proposal to use egg tests would cause a very small, probably negligible increase in the risk that humans could become sick by consuming SE-contaminated eggs from a flock tested under the regulations. The current regulations restrict egg sales when the organs of chickens test positive, theoretically controlling any risk that SE-contaminated eggs could be laid in that flock throughout its production cycle. Since the proposed regulations do not attempt to restrict egg sales based on organ tests, there is a small theoretical risk that a flock could contain infected chickens that produce contaminated eggs only outside the time period covered by the four consecutive egg testing periods. We estimate a probability of less than 1 in 10,000 that this could occur.

The proposal would also allow restricted eggs to be sold for hard cooking at facilities that operate under Agricultural Marketing Service (AMS) supervision, but are not egg products plants formally approved under AMS regulations in 7 CFR part 59. Such hard cooking facilities would incur expenses equivalent to those borne by formally approved egg products plants during the periods they actually hard cook eggs under the proposed regulations, because they would have to pay for inspectors to be present during arrival of restricted eggs and their hard cooking, and would have to maintain records and meet other AMS requirements. However, for a facility that only hard cooks eggs under the proposed regulations on an intermittent basis, costs associated with AMS supervision would be proportionally less (i.e., proportional to the percentage of time the facility process restricted eggs) than the costs incurred by an egg products plant that continuously operates under 7 CFR part 59.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82, Subpart B, would be revised to read as follows:

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; CHICKEN DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

Subpart B—Chicken Disease Caused by Salmonella enteritidis Serotype enteritidis

Sec.

Authority: 21 U.S.C. 111-113, 115, 117, 120, 123-126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart B—Chicken Disease Caused by Salmonella enteritidis Serotype enteritidis

§ 82.30 Definitions.

As used in connection with this subpart, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Authorized laboratory. A laboratory approved to conduct tests for *Salmonella enteritidis* serotype *enteritidis* in accordance with § 82.39 of this subpart.

Certified Salmonella enteritidis serotype enteritidis Tested Free Flocks. Egg-type chicken breeding flocks that are classified "U.S. Sanitation Monitored" under the National Poultry Improvement Plan (NPIP), or meet the requirements of a State classification plan determined by the Administrator to be equivalent to the NPIP, in accordance with § 145.23(d) of this chapter.

Egg production flock. A flock maintained for the purpose of producing eggs for human consumption.

Federal representative. An individual employed and authorized by the Federal government to perform the tasks required by this subpart.

Flock. All of the poultry on one premises.

Hatching eggs. Eggs in which young chickens are allowed to develop.

Internal organs. All internal organs except for the lungs and organs of the gastrointestinal tract.

Interstate. From one State into or through any other State.

Move (moving, moved, movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Multiplier breeding flock. A flock that is intended for the production of hatching eggs used for the purpose of producing progeny for commercial egg production.

Newly-hatched chicks. Chicks that have not been fed or watered for the first time.

Poultry. Chickens of all ages, including eggs for hatching.

Poultry house. A building or other structure used to house poultry.

Primary breeding flock. A flock composed of one or more generations that is maintained for the purpose of establishing or continuing multiplier breeding flocks for the ultimate purpose of commercial egg production.

Pullet. A young chicken, from the time it is hatched until the time it is old enough to be an effective layer.

Separate poultry house. A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation.

SE-Positive Flock (Eggs). A flock that does not contain separate poultry houses as defined by this section, and in which any egg sample has tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with the egg tests of § 82.32(c) and (d)(3).

SE-Positive Flock (Environment). A flock that does not contain separate poultry houses as defined by this section, and in which any manure or egg transport machinery samples have tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with § § 82.32(b) and (d)(1).

SE-Positive House (Eggs). A poultry house in which any egg sample has tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with the egg tests of § § 82.32(c) and (d)(3).

SE-Positive House (Environment). A poultry house in which any manure or egg transport machinery samples have tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with § § 82.32(b) and (d)(1).

State. Any State, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

State representative. An individual employed in animal health work and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

Study Flock. A flock determined in accordance with § 82.32(a) to be a Study Flock, based on a determination by a Federal representative or State representative through epidemiologic investigation that the flock is a probable source of disease in an outbreak of disease in poultry or humans caused by *Salmonella enteritidis* serotype *enteritidis.*

§ 82.31 Applicability.

The regulations in this subpart apply only to primary and multiplier breeding flocks used for the purpose of producing progeny for commercial egg production, and to egg production flocks used for the purpose of producing table eggs for sale or other distribution in interstate commerce or for export.

§ 82.32 Identification of Study Flocks, SE-Positive Flocks, and SE-Positive Houses.

Only a Federal or State representative[1] may make a determination in accordance with this subpart that an egg production flock is a Study Flock or an SE-Positive Flock, or that a poultry house is an SE-Positive House. The Federal or State representative shall also determine which subunits of a flock meet the definition of a separate poultry house in § 82.30 of this subpart. Immediately after a Study Flock, SE-Positive Flock, or SE-Positive House is identified, a Federal or State representative shall notify in writing the person in control

[1] The location of Federal or State representatives may be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

of the flock that his or her flock has been determined to be a Study Flock or SE-Positive Flock, or that specified poultry houses in the flock have been determined to be SE-Positive Houses. At any time after the notification, the person in control of the flock or house, upon request of a Federal or State representative, shall make available for review and copying all records maintained in accordance with 7 CFR 59.200[2] and all other records of the shipment of poultry and poultry products to and from the flock.

(a) *Study Flocks.* An egg production flock shall be determined to be a Study Flock when:

(1) The Administrator determines that the flock has been implicated as the probable source of disease in an outbreak of disease in humans or poultry caused by *Salmonella enteritidis* serotype *enteritidis*. The Administrator shall make such a determination after he or she determines that:

(i) Laboratory reports from Federal or State health agencies identify the cause of the outbreak as *Salmonella enteritidis* serotype *enteritidis*;

(ii) There is a significant epidemiologic association showing that eggs were the most probable source of the *Salmonella enteritidis* serotype *enteritidis* organisms that caused the outbreak; and

(iii) Shipping records or other evidence reveal that a flock was a probable source of the eggs. If the shipping records or other evidence identify more than one flock as a probable source of the eggs, the Administrator may classify all such flocks as study flocks; *provided:* that

(iv) No flock will be determined to be a Study Flock if the flock is participating in a voluntary testing and control program for *Salmonella enteritidis* serotype *enteritidis* that the Administrator has determined imposes testing and interstate movement restrictions identical or equivalent to those required by this subpart. Testing requirements will be deemed equivalent to those required by this subpart if the Administrator reviews scientific studies of the effectivenes of the tests in identifying *Salmonella enteritidis* serotype *enteritidis* and finds that the reliability of the proposed tests meets or exceeds the reliability of the tests required by this subpart.

(b) *SE-Positive Houses (Environment) and SE-Positive Flocks (Environment).* A separate poultry house in a Study Flock shall be determined to be an SE-Positive House (Environment) if manure and egg transport machinery samples from the house are collected and tested in accordance with this paragraph, and one or more of the samples from the house tests positive for *Salmonella enteritidis* serotype *enteritidis*. The entire flock shall be determined to be an SE-Positive Flock (Environment) if the flock does not contain separate poultry houses as defined in § 82.30, and if manure and egg transport machinery samples from any poultry house in the flock test positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with this paragraph. If a Federal representative determines on the basis of epidemiologic investigation that any flock is a probable source of disease in two or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*, that flock shall be determined to be an SE-Positive Flock (Environment); however, such flocks shall have manure and egg transport machinery samples collected and tested in accordance with paragraphs (b)(1) and (d) of this section, and any separate poultry houses from such flock that test negative in accordance with paragraph (d) of this section shall be released from SE-Positive House (Environment) status. A Study Flock shall be determined to be in SE-Positive (Environment) status if the person in control of the flock has refused to schedule collection of samples in accordance with paragraph (b)(1) of this section within 48 hours of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be a Study Flock, or if the actions of the person in control of the flock prevent completion of collection of samples within 15 days of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be a Study Flock.

(1) *Sample collection.* A Federal representative or State representative shall initiate testing of each Study Flock by collecting the following samples for testing:

(i) *Manure sample collection.* A Federal representative or State representative shall collect manure samples from each row of cages, or from the floor area if there are no cages, using a sterile 4-inch by 4-inch gauze sponge premoistened with double strength skim milk or canned skim milk for each sample. The manure samples shall be collected by fastening the gauze sponges to the scraper frame and running the scraper the full length of the row of cages, if a manure scraper is used on the row; otherwise, the manure sample shall be collected by dragging the swab along the manure pile beneath the cages, or once along the full length of the floor if there are no cages. The gauze sponges used to collect manure samples from each bank of cages shall be placed in an 18-ounce whirl-pak plastic bag containing double strength skim milk or canned skim milk, and the bag shall be marked with the location of the bank or floor area from which the sample is taken.

(ii) *Egg transport machinery samples.* The Federal representative or State representative shall collect one egg transport machinery sample from each row of cages by vigorously wiping the egg transport belt and egg escalator, using a sterile 4-inch by 4-inch gauze sponge for each sample. The gauze sponge used to collect egg transport machinery samples from each row shall be placed in an 18-ounce whirl-pak plastic bag containing double strength skim milk or canned skim milk, and the bag shall be marked with the location of the row from which the sample is taken.

(iii) *Rodent sample collection.* At the time that manure or egg transport machinery samples are collected in accordance with § 82.32(b)(1) and tested in accordance with § 82.32(d), a Federal representative or State representative shall place 12 repeating metal rodent traps baited with chicken feed in each poultry house. The traps shall be placed in any areas showing visible signs of rodent activity or rodent travel. A Federal representative or State representative shall check the traps at 24 to 48 hour intervals during the period that sample collection is underway, and shall collect all rodents trapped, euthanize them, and submit them to a laboratory authorized in accordance with § 82.39 for testing. A Federal representative or State representative shall clean and sanitize the traps between uses.

(iv) *Egg sample collection.* A Federal representative or State representative shall randomly collect a total of 1,000 eggs from each egg layer house, or the total daily production of the house if the daily egg production totals less than 1,000. In order to acquire a representative sample, an equal proportion of eggs will be sampled at random from each bank in the poultry house. No cracked or dirty eggs shall be collected. Any visible adherent material shall be removed from the shell surface

[2] In accordance with 7 CFR 59.200, persons engaged in the business of transporting, shipping, receiving, holding, or handling eggs or egg products in commerce shall maintain records for 2 years showing the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of an authorized representative of the Secretary, permit the representative, at reasonable times, to have access to and to copy all such records.

and the eggs disinfected, either by a 5 second dip in boiling water, or with a 3:1 solution consisting of 3 parts 70% alcohol (ethyl or isopropyl) to 1 part 10% iodine (Lugol's). The eggs will then be allowed to air dry. Eggs with chipped, cracked, or broken shells shall not be included in a sample. Each sample shall consist of 20 eggs cracked aseptically into a sterile whirl-pak bag, for a total of 50 samples per house. While cracking the eggs, the Federal or State representative must wear sterile gloves, which must be changed between samples.

(c) *SE-Positive Houses (Eggs) and SE-Positive Flocks (Eggs).* (1) A separate poultry house shall be determined to be an SE-Positive House (Eggs) if the house is tested in accordance with this paragraph and *Salmonella enteritidis* serotype *enteritidis* is recovered from the eggs of one or more chickens in the house. A flock that does not contain separate poultry houses as defined in § 82.30 shall be determined to be an SE-Positive Flock (Eggs) if the flock is tested in accordance with this paragraph and *Salmonella enteritidis* serotype *enteritidis* is recovered from the eggs of one or more chickens in the flock.

(2) If *Salmonella enteritidis* serotype *enteritidis* is not recovered from the eggs, a second, third, and fourth set of egg samples from poultry in that house or flock shall be collected and tested in accordance with this paragraph at 14 day intervals beginning 14 days after the date the first egg samples are collected.

(3) If none of these four tests yield positive results for SE, the flock or house shall remain in SE-Positive (Environment) status, and a random sample of 1,000 eggs from each house shall be collected every 3 months for the life of the flock and tested in accordance with this paragraph. If any such egg tests yield positive results for *Salmonella enteritidis* serotype *enteritidis* the house or flock shall be reclassified as SE-Positive (Eggs) status, and interstate movement restrictions on eggs from the flock or house shall be applied in accordance with § 82.34.

(4) An SE-Positive (Environment) House or Flock shall be determined to be in SE-Positive (Eggs) status if the person in control of the flock has refused to schedule collection of samples in accordance with paragraph (b)(1) of this section within 48 hours of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be SE-Positive (Environment), or if the actions of the person in control of the flock prevent completion of collection of samples within 15 days of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be SE-Positive (Environment).

(d) *Test methods for samples.* Manure, egg transport machinery, rodent, and egg samples shall be sent for testing to an authorized laboratory, where they shall be cultured for isolation and identification of *Salmonella enteritidis* serotype *enteritidis* as follows:

(1) *Manure and egg transport machinery sample testing.* Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate an XLT4 agar plate and a brilliant green novobiocin agar plate, and incubated at 41°C for 24 hours. Up to five *Salmonella*-suspect colonies from each sample shall be inoculated in triple-sugar iron (TSI) and lysine-iron (LI) media, and incubated at 41°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antiserum. All Group D isolates shall be sent to the National Veterinary Services Laboratories for further characterization.

(2) *Rodent sample testing.* Internal organs, and a portion of the intestinal tract, shall be aseptically collected from each rodent submitted. A sample will consist of the liver, spleen, and intestinal tissues collected from one or more rodents, in pool sizes up to five rodents per pool. Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate two different selective media agar plates (consult NVSL for recommended media) and incubated at 37°C for 24 hours. Up to five Salmonella-suspect colonies from each sample shall be inoculated in TSI and LI media, and incubated at 37°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antisera. All Group D isolates shall be sent to the National Veterinary Services Laboratories for species identification.

(3) *Egg sample testing.* Each sample shall be thoroughly mixed by hand, or using a stomacher, until all yolks are completely mixed with the albumen. Samples shall then be held at room temperature (68–75°F) for at least 72 hours. Each sample shall be used to inoculate two selective differential media plates (for example, brilliant green (BG) and xylose-lysine-deoxycholate (XLD) plates). Plates shall be incubated at 37°C and observed for salmonellae-like colonies for up to 42 hours. If initial inoculum is heavily contaminated, selectively enrich samples in Hajna tetrathionate or tetrathionate-brilliant green broth or subculture to xylose-lysine-tergitol-4 (XLT4) or brilliant green with novobiocin (BGN). If salmonella-like colonies are present in a sample, three such colonies shall be characterized by inoculating each into triple sugar iron (TSI) and lysine iron (LI) agar, and by subculturing each to nonselective medium and serogrouping with group specific antisera. Additional testing is optional. Those colonies that are biochemically and serologically characterized as salmonellae shall be sent to NVSL for serotyping.

(e) *Continued egg testing of SE-Positive Houses (Eggs) and SE-Positive Flocks (Eggs).* The owner of an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs) may request a Federal or State representative to continue testing the eggs of the house or flock after the house or flock is placed in SE-Positive (Eggs) status. Any such egg testing will be conducted in accordance with § § 82.32(b)(1)(iv) and (d)(3), at 14 day intervals, until the owner requests the tests be discontinued or until the house or flock is reclassified to SE-Positive (Environment) status in accordance with § 82.33(c)(2).

(Approved by the Office of Management and Budget under control number 0581–0113.)

§ 82.33 Release from Study Flock, SE-Positive Flock, and SE-Positive House status; post-release sampling and testing.

(a) *Release from Study Flock status.* A flock shall be released from Study Flock status after a Federal or State representative determines that manure and egg transport machinery samples have been collected from the flock and tested in accordance with § § 82.32(b)(1) and (d)(1), with no recovery of *Salmonella enteritidis* serotype *enteritidis*, or determines that the flock has been depopulated (either prior to or after any testing in accordance with this subpart), and its houses have been cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(b) *Release from SE-Positive House (Environment) or SE-Positive Flock (Environment) status.* A Federal or State representative shall determine that a separate poultry house is no longer an

SE-Positive House (Environment), or that a flock is no longer an SE-Positive Flock (Environment), and shall notify in writing the person in control of the house or flock of that determination, after determining that the house or flock has been depopulated, cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(c) *Release from SE-Positive House (Eggs) or SE-Positive Flock (Eggs) status.* (1) A Federal or State representative shall determine that a house or flock is no longer an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs), and shall notify in writing the person in control of the house or flock of that determination, after determining that the house or flock has been depopulated and cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(2) *Reclassification to SE-Positive House (Environment) or SE-Positive Flock (Environment) status.* An SE–Positive House (Eggs) or an SE–Positive Flock (Eggs) that undergoes four consecutive sets of egg tests with negative results in accordance with § 82.32(e) will be reclassified as an SE–Positive House (Environment) or an SE–Positive Flock (Environment).

(d) *Post-release sampling and testing.* For 18 months following the repopulation of a flock or house released from SE-Positive (Environment) or SE-Positive (Eggs) status due to depopulation, cleaning, washing, and disinfection pursuant to paragraphs (b) or (c) of this section and § 82.38, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of § § 82.32(b)(1) and (d)(1) test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be placed in SE-Positive (Environment) status. If one or more egg samples collected and tested in accordance with the provisions of § § 82.32(c) and (d)(3) test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be placed in SE-Positive (Eggs) status. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be placed in SE-Positive (Environment) status.

§ 82.34 Interstate movement of articles from SE-Positive Houses and SE-Positive Flocks.

Eggs, live chickens, cages, coops, containers, troughs, and other equipment, and manure may be moved interstate from an SE-Positive House or SE-Positive Flock only in accordance with this section. These articles may be moved interstate from a Study Flock without restriction by this section.

(a) *Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment).* (1) Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) that has completed four sets of egg tests in accordance with § 82.32(c) with negative results may be moved interstate without restriction by this section. Until the SE-Positive House (Environment) or an SE-Positive Flock (Environment) has completed four sets of egg tests in accordance with § 82.32(c), interstate movement of eggs from the house or flock will be restricted in accordance with paragraph (a)(2) of this section.

(2) Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) that has completed at least one set of egg tests in accordance with § 82.32(c) with negative results may be moved interstate without restriction, pending completion of the remaining three sets of egg tests. Until the first of the four sets of egg tests are completed in accordance with § 82.32(c) with negative results, eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) may be moved interstate only under the following conditions. Eggs that are crushed and denatured or otherwise denatured to deter their use as human food in accordance with 7 CFR part 59 may be moved interstate without further restriction under this subpart; *except that,* if the restricted eggs are destined for use as a protein or mineral supplement in animal feed, the eggs may be moved interstate only for pasteurization. Other eggs may be moved interstate only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking (cooked until the yolk and white have solidified) and processing under Agricultural Marketing Service supervision in accordance with the provisions of 7 CFR part 55. Such eggs may only be moved if:

(i) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart, and

(ii) The eggs are moved in a completely enclosed compartment of a vehicle that has had a seal applied to it by a Federal or State representative[3] immediately prior to movement. Such eggs may not be unloaded during transit. For eggs moved to an egg products plant, a Federal or State representative shall break the vehicle's seal at the plant. After the eggs are unloaded, the operator of the vehicle shall clean and disinfect the compartment in accordance with § 71.7 of this chapter prior to the time the vehicle leaves the premises of the egg products plant or other location approved to receive the eggs.

(b) *Eggs from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs).* Eggs from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs) may be moved interstate only under the following conditions. Eggs that are crushed and denatured or otherwise denatured to deter their use as human food in accordance with 7 CFR part 59 may be moved interstate without further restriction under this subpart; *except that,* if the restricted eggs are destined for use as a protein or mineral supplement in animal feed, the eggs may be moved interstate only for pasteurization. Other eggs may be moved interstate only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking (cooked until the yolk and white have solidified) and processing under Agricultural Marketing Service supervision in accordance with the provisions of 7 CFR part 55. Such eggs may only be moved if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart, and

(2) The eggs are moved in a completely enclosed compartment of a vehicle that has had a seal applied to it by a Federal or State representative[3] immediately prior to movement. Such eggs may not be unloaded during transit. For eggs moved to an egg products plant, a Federal or State representative shall break the vehicle's

[3]The location of Federal or State representatives may be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

seal at the plant. After the eggs are unloaded, the operator of the vehicle shall clean and disinfect the compartment in accordance with § 71.7 of this chapter prior to the time the vehicle leaves the premises of the egg products plant or other location approved to receive the eggs.

(c) Live chickens may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The chickens are moved interstate to a Federally inspected slaughtering establishment;

(3) The chickens are slaughtered within 24 hours of arrival at the Federally inspected slaughtering establishment; and

(4) The wheels and exposed surfaces of the vehicle used to move the chickens are free of manure at the time the vehicle leaves the premises of the SE-Positive house or flock and are cleaned and disinfected in accordance with § 71.7 of this chapter after the chickens are unloaded and prior to the time the vehicle leaves the premises of the slaughtering establishment. Trucks can be sealed by a Federal or State representative after unloading, in lieu of cleaning and disinfection, and unsealed by a Federal or State representative upon return to the SE-Positive house or flock, to allow multiple trips during depopulation of a flock or house.

(d) Cages, coops, containers, troughs, and other equipment may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The equipment is made of hard plastic or metal;

(3) The equipment has been cleaned and disinfected in accordance with § 71.7 of this chapter;

(4) The equipment was inspected by a Federal or State representative after it was cleaned but before it was disinfected, and then was disinfected in the presence of a Federal or State representative; and

(5) The wheels and exposed surfaces of the vehicle used to move the equipment are free of manure at the time the equipment leaves the premises of the flock.

(e) Manure may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The wheels and exposed surfaces of the vehicle used to move the manure are free of manure at the time the manure leaves the premises of the flock;

(3) The manure is moved interstate for one of the following purposes:

(i) Burial;

(ii) Spreading and turning under on fields not used for grazing or poultry production; or

(iii) Composting in a covered compost heap for a period of at least 1 month. Compost derived from an SE-Positive House or Flock may not be used for animal feed; and,

(4) The manure will be in an isolated area such that no poultry or livestock will come in contact with the manure.

(Approved by the Office of Management and Budget under control number 0581–0113.)

§ 82.35 Interstate movement of hatching eggs, newly-hatched chicks, and pullets.

(a) *Hatching eggs and newly-hatched chicks.* No hatching eggs or newly-hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the National Poultry Improvement Plan (NPIP), or meet the requirements of a State classification plan determined by the Administrator to be equivalent to the NPIP, in accordance with § 145.23(d) of this chapter. Flocks which meet this requirement are designated Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks.

(b) *Pullets.* This paragraph applies to any primary or multiplier breeding flock that has had SE recovered from the internal organs of one or more chickens through testing in accordance with § 145.23(d) of this chapter, at any time since the last negative environmental sample for that house or flock in accordance with § 145.23(d) of this chapter. The owner of any such flock must give written notice to all persons who purchased chicks from the flock at any time after the last negative test in accordance with § 145.23(d). The written notice must state that the primary or multiplier breeding flock has tested positive for SE through testing conducted in accordance with § 145.23(d) of the NPIP.

§ 82.36 Issuance of permits.

(a) Permits required by this part may be obtained by the owner of poultry or other items, or the agent of the owner, by applying in writing to a Federal representative.[4] The application shall specify the following:

(1) The name and mailing address of the owner of the poultry or other items to be moved; or

(2) The name and address of the agent of the owner;

(3) The name and mailing address of the person who will receive the poultry or other items;

(4) The street addresses of both the origin and destination of the shipment;

(5) The number and types of poultry and other items to be moved; and

(6) The reason for their movement.

(b) [Reserved]

§ 82.37 Denial and withdrawal of permits.

(a) *Denial.* If a Federal representative denies a request for a permit, he or she will send the applicant a written notice of the denial, explaining why the permit was denied.

(b) *Withdrawal.* If a Federal representative determines that the holder of a permit is violating either the regulations or a condition specified in the permit, he or she may withdraw the permit by notifying the holder of the permit of its withdrawal, orally or in writing. If the notice was oral, a written notice of the withdrawal, explaining why the permit was withdrawn, will follow.

(c) *Appeals.* Denial or withdrawal of a permit may be appealed in writing to the Administrator within 10 days after receipt of the written notice of denial or withdrawal. The appeal must tell the Administrator what material facts are in dispute. A hearing will be held with respect to any disputed material facts, in accordance with rules of practice which shall be adopted by the Administrator for the proceeding; however, the withdrawal or denial shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

§ 82.38 Cleaning, washing, and disinfection of depopulated flocks and houses.

In order to be released from Study Flock, SE-Positive Flock, or SE-Positive House status, in accordance with § 82.33, when any Study Flock, SE-Positive House or SE-Positive Flock is depopulated[5], each poultry house shall be cleaned, washed, and disinfected using the following methods, or alternate methods approved by the Administrator, between the time the

[4] See Footnote 3 to § 82.34 of this part.

[5] Upon request of the flock owner, APHIS will conduct environmental testing for *Salmonella* of depopulated poultry houses between the time they are disinfected and the time they are restocked.

poultry house is depopulated and the time the new chickens arrive at the premises. All manure and litter must be removed from the house to an isolated area where no poultry or livestock will come in contact with the manure or litter; all surfaces in the house (except dirt floors) must be scrubbed with hot, soapy water and rinsed; and all surfaces in the house must be sprayed in accordance with the label directions with a disinfectant which is registered by the U.S. Environmental Protection Agency as germicidal, and which is effective against *Salmonella enteritidis* serotype *enteritidis*. The owner or person in control of the Study Flock or SE-Positive Flock or House must request a Federal or State representative to inspect each poultry house after it is disinfected but before it is restocked with new chickens, and cleaning, washing, and disinfection shall not be considered completed until a Federal or State representative determines the procedures have been properly performed.

§ 82.39 Approval of authorized laboratories.

(a) Application for authorized laboratory status shall be made in writing by the owner or operator of the laboratory and sent to the Administrator, Animal and Plant Health Inspection Service, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The applying laboratory will bear all costs associated with its application process. The Administrator will consider a laboratory for approval only after consulting with the Director, National Veterinary Services Laboratories (NVSL), and determining that NVSL's capacity for conducting tests under this subpart has been exceeded.

(b) The Administrator will approve an authorized laboratory only after consulting with the Area Veterinarian in Charge and the State animal health official in the State in which the laboratory is located and after determining that the laboratory:

(1) Is supervised by a person holding, as a minimum, a bachelor's degree in either chemistry, microbiology, or a related field and having 1 year's experience in diagnostic microbiology;

(2) Maintains laboratory quality control records for the most recent 3 years that samples have been analyzed in accordance with this subpart;

(3) Passes annual check test proficiency studies conducted by NVSL;

(4) Maintains complete records of the receipt, analysis, and disposition of official samples for the most recent 3 years that samples have been analyzed in accordance with this subpart;

(5) Reports all positive results of all tests ordered in accordance with this subpart or in accordance with § 145.23(d) of this chapter to the State animal health official and APHIS.[6];

(6) Analyzes NVSL check test proficiency samples and returns the results to NVSL within 3 weeks of sample receipt. This must be done whenever requested by NVSL and at no cost to USDA;

(7) Informs the Administrator by certified or registered mail, within 30 days, when there is any change in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity; and

(8) Permits any duly authorized representative of the Administrator to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours and to copy all such records.

(c) The Administrator may revoke the authorized status of a laboratory after determining that the laboratory fails to meet any requirement of this section. The revocation will be effective on the date written notice of revocation is given to the owner or operator of the laboratory. A laboratory whose accreditation has been revoked may reapply for authorized laboratory status no sooner than 6 months after the effective date of revocation, and must provide written documentation specifying what corrections were made.

Done in Washington, DC, this 27th day of July, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18216 Filed 7–30–93; 8:45 am]

BILLING CODE 3410–34–F

[6] Training requirements, standard test protocols, and check test proficiency requirements prescribed by the National Veterinary Services Laboratories and the names and addresses of authorized laboratories can be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 12

[RIN 3150–AE61]

Equal Access to Justice Act: Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by adding new provisions designed to implement the Equal Access to Justice Act (EAJA). The EAJA provides for the award of fees and expenses to certain individuals and businesses that prevail in agency formal adjudicatory proceedings in which the agency's position is determined not to have been substantially justified. A proposed rule to implement the EAJA was issued by the Commission in 1981, but no further action was taken on it. Because of the considerable period that has transpired since then, the Commission is withdrawing the 1981 proposed rule and replacing it with the rule now being proposed.

DATES: The comment period expires September 1, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cho, Special Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1585.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (EAJA) first became law on October 21, 1981 (5 U.S.C. 504). The EAJA authorizes agencies to award attorney fees and other expenses to parties that prevail over an agency in certain agency proceedings under specified circumstances. For an award to be made, the proceeding must be one that is "required by statute to be determined on the record." See *Ardestani* v. *U.S.*,